

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND; PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND OF
PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF TEACHERS
HEALTH AND WELFARE FUND; DISTRICT
COUNCIL 37, AFSCME - HEALTH &
SECURITY PLAN; JUNE SWAN; MAUREEN
COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri corporation,
and McKESSON CORPORATION, a Delaware
corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

**DEFENDANT MCKESSON CORPORATION'S MOTION FOR LEAVE
TO FILE UNDER SEAL**

McKesson Corporation hereby moves for leave to file its Second Supplement of the Class Certification Record, and Exhibits 1 and 2 thereto under seal, and to file a redacted version of this Supplement in the public record. The documents in these exhibits were produced by third parties to this litigation, and contain sensitive information which, if disclosed, could risk competitive injury to the producing parties.

In support of this motion, McKesson states as follows:

1. McKesson submits this motion solely on behalf of the third parties who provided the testimony described below. Such confidential information of third parties is entitled to heightened protection. *See Rossbach v. Rundle*, 128 F. Supp. 2d 1348, 1352 (S.D. Fla. 2000) (“When the sensitive information pertains to non-parties who are not public figures, the balancing of interests in favor of protecting the privacy of the non-parties and against uninhibited access to the records is strengthened.”); *see also United States v. Snyder*, 187 F. Supp. 2d 52, 63 (N.D.N.Y. 2002) (“The privacy interests of innocent third parties . . . should weigh heavily in a court’s balancing equation.”) (citation omitted).

2. On July 26, 2007, plaintiffs filed a motion to seal their second supplement to the class certification record. On July 31, 2007, the Court ruled on plaintiffs’ motion and entered an order stating: “The documents can be sealed until further order.” (*See* Order entered August 1, 2007.) The documents sealed by the Court include excerpts of the deposition transcripts of William Kiefer of Express Scripts, Inc. (“ESI”) and Nancy Stalker of Blue Shield of California (“BSCA”), which were designated by these third parties as “highly confidential” under the protective order. Here, McKesson seeks only to seal excerpts that have already been sealed by the Court and additional excerpts from these very same deposition transcripts that plaintiffs omitted from their submission.

3. The publicly filed version of McKesson’s Second Supplement of the Class Certification Record has been redacted only insofar as it contains quotes from the deposition transcripts of ESI and BSCA that have been designated as “highly confidential.”

4. Paragraph 14 of the Protective Order mandates that any document or pleading containing the type of confidential material referenced above be filed under seal. McKesson hereby seeks to comply with the terms of the Protective Order upon which third parties relied when they provided testimony in response to subpoenas served in this action.

WHEREFORE, McKesson respectfully requests that this Court grant it leave to file its second supplement to the class certification record under seal. McKesson has publicly filed a redacted copy of this Supplement, which excises only information from third party deposition transcripts that have been designated “highly confidential” and for which substantial portions have already been sealed by the Court.

Respectfully submitted,

McKesson Corporation
By its attorneys:

/s/ Paul Flum

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Dated: August 1, 2007

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I, Paul Flum, counsel of record for defendant McKesson Corporation, hereby certifies that McKesson’s counsel has spoken with representatives of the third parties whose documents are the subject of this motion, and those third parties have confirmed that they regard the documents as confidential and that the documents should be filed under seal.

/s/ Paul Flum
Paul Flum

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on August 1, 2007.

/s/ Paul Flum
Paul Flum

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**[PROPOSED] ORDER GRANTING MCKESSON CORPORATION'S
MOTION FOR LEAVE TO FILE UNDER SEAL**

McKesson Corporation seeks leave to file under seal its Second Supplement of the Class Certification Record, and certain exhibits thereto, which were produced by third parties, and which contain information that is confidential to those parties. McKesson has publicly filed a redacted version of this Supplement that excises only this confidential information. For the same reasons underlying the Court's July 31, 2007 order sealing portions of the same third party transcripts at issue in this motion, the Court, having

considered all documents in support and opposition hereto, hereby GRANTS
McKesson's Motion for Leave to File Under Seal the following documents:

1. McKesson Corporation's Second Supplement of the Class Certification
Record [Redacted version publicly filed];
2. Exhibits 1 and 2 attached to McKesson Corporation's Second Supplement
of the Class Certification Record.

IT IS SO ORDERED.

DATED: _____

Hon. Patti B. Saris
United States District Court Judge